In the Supreme Court
OF THE
United States

OCTOBER TERM, 1930

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THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,
Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,
Appellees.

No. 470

LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation,
Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,
Appellees.

No. 471

SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
Appellants,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,
Appellees.

No. 472

Statement of Appellants Respecting Jurisdiction of Court to Review Judgment Involved Herein.

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Statement of Appellants Respecting Jurisdiction of Court to Review Judgment Involved Herein.

May it please the court:

Pursuant to paragraph 1 of rule 12 of this court, appellants present the following statement as to the basis on which this court has jurisdiction to review the judgment of the Supreme Court of the state of California involved herein.

A. Reference to Statutory Provisions Sustaining Jurisdiction.

(Note: The record has not been printed. All reference to pages of record are to the paging of the record certified by the clerk of the Supreme Court of California and on file in this court.)

These are appeals by The Atchison, Topeka and Santa Fe Railway Company, and Los Angeles & Salt Lake Railroad Company, and Southern Pacific Company and Southern Pacific Railroad Company (hereinafter called appellants), under section 237(a) of the Judicial Code, (as amended by the Act of February 13, 1925, c. 229, 43 Stat. 937, the Act of January 31, 1928, c. 14, 45 Stat. 54, and the Act of April 26, 1928, c. 440, 45 Stat. 466) from a final judgment [Record pp. 259-274], in suits in the highest court of a state, to wit, the Supreme Court of the state of California (which suits were therein consolidated [Record p. 258]), in which suits there was drawn in question the validity of a certain order, legislative in character, of the Railroad Commission of the state of California and of a statute of said state, on the ground of their being repugnant to

the constitution of the United States, particularly the Fourteenth Amendment thereof, and the Commerce Clause, Article I, section 8, clause 3, and on the ground of their being repugnant to the laws of the United States, namely, paragraphs 18, 19, 20 and 21 of section 1 and paragraphs 3 and 4 of section 3 of the Interstate Commerce Act as amended by Transportation Act, 1920 (41 Sta. L. 474; U. S. Code Title 49, section 1, section 3).

B. Date of Decree and Date of Application for Appeal.

The judgment sought to be reviewed was entered on the 27th day of May, 1930 [Record pp. 259-274]. Petitions for appeal [Record pp. 310-319] were filed and presented by appellants, and orders allowing appeal were made and entered on the 26th day of June, 1930 [Record pp. 349-354]. The time within which to file the record and docket the causes was, by stipulation and order extended to September 24, 1930 [Record pp. 471-472].

C. Statement of Nature of Case and of Rulings Below Showing It to Be Within Jurisdictional Provisions Relied Upon.

The Railroad Commission of the state of California is a commission created by sections 22 and 23 of article XII of the California constitution as amended respectively October 10, 1911 and November 3, 1914. By those sections the legislature is authorized to confer additional powers upon the Railroad Commission and the authority of the legislature to confer such additional powers is expressly declared to be plenary and

unlimited by any other provision of the California constitution. (See Appendix, pp. 1 and 4.)

In proceedings before said commission wherein appellants were defendants, said commission, claiming jurisdiction under a statute of said state, known and designated as the "Public Utilities Act" (Stats. 1915, Chap. 91, p. 115; Sections 13(b), 22(a), 30, 31, and particularly Section 36 thereof, see Appendix page 6), made a decision and order, No. 18593 [Record pp. 155-171] on July 8, 1927, commanding appellants to construct, and thereafter operate a union passenger station within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue, and the Los Angeles river, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars ($10,000,000.00) in substantial compliance with the plan outlined in commission's Exhibit 4-B [Record p. 428].

Said decision and order commanded the appellant Southern Pacific Company, upon and after the construction of said station, to abandon and discontinue passenger and freight train service, excepting only industrial freight switching over that portion of its railroad between College street and East Fifteenth street, inclusive, in the city of Los Angeles, (which trackage is about 3 double track miles on Alameda street in said city [Record pp. 384, 386]).

Said decision and order by its necessary force and effect requires appellants:

To abandon their present respective passenger stations and passenger station facilities;

to acquire, hold and use for purposes of a union passenger station in said city upwards of 39 acres of land [Record p. 391];

to construct, maintain and operate on said land upwards of 8 miles of joint station tracks [Record pp. 169-171, Exhibit No. 90, Record pp. 452-455];

to extend their respective main lines to reach said union passenger station and terminal described in said order [Record p. 167] requiring new main line extensions as follows: Southern Pacific Company and Southern Pacific Railroad Company about 1½ double track miles; Los Angeles & Salt Lake Railroad Company about ¼ mile; The Atchison, Topeka and Santa Fe Railway Company about ½ mile [Record p. 386];

to make connections between their respective main line tracks [Record p. 386, Items E, AD, MD2, and M4];

to construct other new trackage as follows: The Atchison, Topeka and Santa Fe Railway Company 5.3 miles of new tracks detailed in Exhibit No. 90 [Record pp. 452-457]; the Southern Pacific Company and Southern Pacific Railroad Company 6.5 miles of new coach yard tracks [Exhibit No. 88—original certified separately; Exhibit 90, Record p. 452; Exhibit 6, Item SP3, Record p. 386];

to jointly use one another's terminal main line tracks [Record pp. 168, 380] as follows: the Southern Pacific passenger trains to reach the

station from the north by joint use of The Atchison, Topeka and Santa Fe Railway Company's main line tracks, about 1½ double track miles, and in freight service to jointly use the main line tracks of Los Angeles & Salt Lake Railroad Company, about 4 double track miles [Record pp. 381, 386], the Southern Pacific passenger trains from the east to reach the station by joint use of Los Angeles & Salt Lake Railroad Company's main line tracks, about ¾ double track miles [Record pp. 380, 386], and an extension thereof to be constructed across the Los Angeles river to the station about ¼ double track miles [Record p. 386]; the Los Angeles & Salt Lake Railroad Company to use about 4 double track miles of the main line of the tracks of The Atchison, Topeka and Santa Fe Railway Company [Record pp. 381, 386].

If such joint use of main line tracks should not be made, extensions of main line tracks of an equivalent mileage are by the necessary force and effect of the commission's said decision and order required to be constructed and operated [Record pp. 155-171, 384, 386].

The cost of land so ordered to be acquired and dedicated to public use and of the tracks and buildings so ordered to be constructed, provided joint use of main line tracks should be made as above stated, would be upwards of $10,000,000.00 [Record pp. 166, 452-455].

The three appellants are transcontinental steam railroads [Record p. 12] engaged in interstate transportation of passengers and freight [Record p. 173—

City of Los Angeles Original Exhibit No. 5 certified separately] and handle a large volume of such passenger traffic [Record pp. 403, 404, 405-408].

Following the making of said decision and order appellants Southern Pacific Company and Southern Pacific Railroad Company, and Los Angeles & Salt Lake Railroad Company, on July 16, 1927, and appellant The Atchison, Topeka and Santa Fe Railway Company, on July 21, 1927, filed with said commission applications for rehearing wherein was drawn in question the validity of said order and of said sections of said Public Utilities Act, particularly section 36 (Cal. Stats. 1915, p. 115. See Appendix, p. 7) insofar as they purport to confer jurisdiction on said commission to make said order, on the ground that said sections and said order were repugnant to said Fourteenth Amendment, to said clause 3 of section 8 of article I of the Constitution of the United States, and to paragraphs 15, 18, 19, 20 and 21 of section 1, and to paragraph 4 of section 3, of said Interstate Commerce Act, as amended [Record pp. 198-209; 214-223; 230-238].

Said applications for rehearing were denied on May 26, 1928 [Record pp. 189-190]. Thereupon, on June 19, 1928, appellants filed in said Supreme Court of California petitions for writs of review to review and annul said order and in said petitions for review set out the same claims as they had set out in said petitions for rehearing as to the invalidity of said sections of said Public Utilities Act, particularly section 36,

and of said order [Record pp. 191-211; 212-225; 226-240].

The court granted said petitions and writs of review issued July 7, 1928 [Record pp. 241-254] and return was made by the Railroad Commission of the state of California on August 6, 1928 [Record pp. 255-257]. The cases were consolidated [Record p. 258].

The proceedings in the Supreme Court of the state of California were original proceedings. They were authorized by section 67 of the Public Utilities Act of said state, which section of said act provides that only the Supreme Court of the state of California shall have jurisdiction to review, reverse, correct or annul any order or decision of said commission (Statutes of California 1915, Chapter 91, p. 115. See Appendix, p. 9).

Thereupon said court refused to annul, but on the contrary, on May 27, 1930, affirmed said order of said commission, and by its judgment entered on said May 27, 1930, held that said sections of said Public Utilities Act and said order were not and that neither of them was repugnant to said constitution or laws of the United States or to any of them [Record pp. 259-274]. Said judgment of the Supreme Court of California held that the Interstate Commerce Commission, having issued certain certificates of convenience and necessity, the Railroad Commission of said state thereupon had power to order appellants to construct the works and do the things for which the Interstate Commerce Commission had so issued certificates [Record pp. 264-265,

274]; thus in effect converting and transforming a permission from the federal government into an order by the state government; thereby regulating interstate commerce in a particular in which Congress had already exercised its power to regulate such commerce; contrary to said commerce clause and to said paragraphs 18, 19, 20 and 21 of section 1, and paragraphs 3 and 4 of section 3 of the Interstate Commerce Act as amended [Record pp. 279-281 and p. 306].

(*Note—The certificates last above mentioned were issued over the protest and against the will of the appellants herein in a certain adverse proceeding in which appellants were defendants* [*Record pp. 172-188; see also Interstate Commerce Commission v. United States, ex rel. City of Los Angeles, 280 U. S. 52*]).

Thereupon, on June 16, 1930, appellants filed in said court a joint petition for rehearing, wherein was drawn in question the validity of said sections, particularly said section 36 (Cal. Stats. 1915, p. 115) of said Public Utilities Act, and of said order, on the ground of their being repugnant to said amendment to the constitution, and to said clause 3 of section 8 of article I thereof, and to paragraphs 18, 19, 20 and 21 of said section 1, and to paragraphs 3 and 4 of said section 3, of said Interstate Commerce Act, as amended [Record pp. 275-305]. Said petition was denied June 26, 1930 [Record p. 306]. The judgment of the Supreme Court of

the state of California entered on May 27, 1930, was, by virtue of the provisions of said section 67 of the Public Utilities Act of said state, a judgment in these suits in the highest court of the state of California in which a decision in said suits could be had, and constitutes a final judgment of said court within the meaning of section 237 of the Judicial Code (U. S. Code Title 28, section 344).

Whereupon appellants filed in said state court, on June 26, 1930, petitions for leave to appeal to this court, and filed with said petitions their several assignments of error, and in said petitions drew in question the validity of said sections of said Public Utilities Act, particularly said section 36 thereof, and said order, as being repugnant to said provisions of the constitution and said provisions of the Interstate Commerce Act [Record pp. 310-313; 314-316; 317-319], and in said assignments of errors charged error in said decision of said state court in holding in favor of the validity of said sections of said Public Utilities Act, particularly section 36 thereof, and of said order, as not being repugnant to said provisions of the constituion, or either of them, or to said provisions of the Interstate Commerce Act, or to any of them [Record pp. 320-348]; and on said date orders were issued allowing appeals [Record 349-354], citations duly issued, served and filed [Record pp. 355-357], and bonds on appeal were filed by appellants on said date [Record pp. 358-369].

And for the purpose of these appeals appellants by document, filed with the clerk of this court, October 1st, 1930, within the time prescribed by paragraph 9 of rule 13, adopted said assignments of errors as the statement of points to be relied upon by them in this court in these proceedings.

D. Cases Believed to Sustain Jurisdiction.

The following decisions of this court are believed to sustain jurisdiction of these appeals:

United Railways and Electric Co. of Baltimore v. Harold E. West, 280 U. S. 234;

New York ex rel. Bryant v. Zimmerman, 278 U. S. 63;

John P. King Mfg. Co. v. City Council of Augusta, 277 U. S. 100;

Sultan Railway & Timber Co. v. Department of Labor and Industries of the State of Washington, et al. and

Eclipse Mill Co. v. Department of Labor and Industries of the State of Washington, et al., 277 U. S. 135;

Northern Pacific Railway Co., et al. v. Department of Public Works of Washington, 268 U. S. 38;

Railroad Commission v. Southern Pacific Co., 264 U. S. 331.

We respectfully submit that this court has jurisdiction of these appeals by virtue of section 237 of the Judicial Code, as amended by Act of February 13, 1925

(43 Stat. at L. 937, Chap. 229, Sec. 1, U. S. C. Title 28, Sec. 344).

Respectfully submitted,

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APPENDIX.

Extracts From the Constitution of the State of California, Sections 22 and 23, Article XII.

Sec. 22. There is hereby created a railroad commission which shall consist of five members and which shall be known as the railroad commission of the state of California. The commission shall be appointed by the governor from the state at large; provided, that the legislature, in its discretion, may divide the state into districts for the purpose of such appointments, said districts to be as nearly equal in population as practicable; and provided, further, that the three commissioners in office at the time this section takes effect shall serve out the term for which they were elected, and that two additional commissioners shall be appointed by the governor immediately after the adoption of this section, to hold office during the same term. Upon the expiration of said term, the term of office of each commissioner thereafter shall be six years, except the commissioners first appointed hereunder after such expiration, one of whom shall be appointed to hold office until January 1, 1917, two until January 1, 1919, and two until January 1, 1921. Whenever a vacancy in the office of commissioner shall occur, the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. Commisioners appointed for regular terms shall at the beginning of the term for which they are appointed, and those appointed to fill vacancies, shall, immediately upon their appointment, enter upon the duties of their offices. The legislature shall fix the salaries of the commissioners, but pending such action the salaries of the commissioners, their officers and employees shall

remain as now fixed by law. The legislature shall have the power, by a two-thirds vote of all members elected to each house, to remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency. All of said commissioners shall be qualified electors of this state, and no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said railroad commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein, shall be appointed to or hold the office of railroad commissioner. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the commission, and every order made by a commissioner so designated, pursuant to such inquiry, investigation or hearing, when approved or confirmed by the commission ordered filed in its office, shall be deemed to be the order of the commission.

Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation

of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission, than the rates fares and charges which are specified in such tariff. The commission shall have the further power to examine books, records and papers of all railroad and other transportation companies; to hear and determine complaints against railroad and other transportation companies; to issue subpoenas and all necessary process and send for persons and papers; and the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.

No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon the railroad commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the railroad commission in this constitution, and the authority of the legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this constitution.

The provisions of this section shall not be construed to repeal in whole or in part any existing law not inconsistent herewith, and the "Railroad Commission Act" of this state approved February 10, 1911, shall be construed with reference to this constitutional provision and any other constitutional provision becoming operative con-

currently herewith. And the said act shall have the same force and effect as if the same had been passed after the adoption of this provision of the constitution and of all other provisions adopted concurrently herewith, except that the three commissioners referred to in said act shall be held and construed to be the five commissioners provided for herein. (Amendment adopted October 10, 1911.)

Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the state of California, and to fix the rates to be charged for commodities furnished, or services ren-

dered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution. From and after the passage by the legislature of laws conferring powers upon the railroad commission, respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; *provided, however,* that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; *and provided, further,* that where any such city and county, or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter sur-

render such powers to the railroad commission in the manner prescribed by the legislature; *and provided, further,* that this section shall not affect the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith. (Amendment adopted November 3, 1914.)

Extracts From Public Utilities Act, Statutes of California 1915, Chap. 91, p. 115.

Sec. 13(b). Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.

Sec. 22(a). Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad corporation shall receive from every other railroad corporation, at any point of connection, freight cars of proper standard and in proper condition, and shall

haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad corporation, or to point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.

Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a common carrier to establish joint rates, fares and charges for transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges.

Sec. 30. Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees.

Sec. 31. The Railroad Commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Sec. 36. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find

that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an

order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

Sec. 67. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the Supreme Court of this state for a writ of *certiorari* or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the Supreme Court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the constitution of the United States or of the state of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The commission and each party to the ac-

tion or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the Supreme Court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the Supreme Court under the provisions of this section. No court of this state (except the Supreme Court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; *provided*, that the writ of mandamus shall lie from the Supreme Court to the commission in all proper cases.